

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DERRICK D. SPEECH #609426,

Plaintiff,

Case No. 1:22-cv-404

v.

HONORABLE PAUL L. MALONEY

UNKNOWN KLUDY, et al.,

Defendants.

/

**ORDER ADOPTING REPORT AND RECOMMENDATION**

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Defendant Kludy filed a motion for summary judgment. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation on May 11, 2023, recommending that this Court grant the motion and enter judgment<sup>1</sup>. The Report and Recommendation mailed to the Plaintiff was returned to the Court marked “return to sender” and “paroled”.

Even though the Plaintiff has not received a copy of the Report and Recommendation, Plaintiff has been properly served under the Federal Rules of Civil Procedure. As required by statute, the magistrate judge filed the Report and Recommendation with the Court and mailed a copy to the Plaintiff at his last known address. *See 28 U.S.C. § 636(b)(1)(C)* (“the magistrate judge shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.”). Upon placing the Report and Recommendation in the mail to the Plaintiff’s last known address, service was complete. Fed. R. Civ. P. 5(b)(2)(C).

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<sup>1</sup> Defendant Unknown Shank was dismissed by prior order of the Court (ECF Nos. 7 and 8).

Plaintiff has a continuing obligation to apprise the Court of his current address. *See* W.D. Mich. L.Civ.R. 41.1 (“Failure of a plaintiff to keep the Court apprised of his current address shall be grounds for dismissal for want of prosecution.”).

After being served with a Report and Recommendation issued by a Magistrate Judge, a party has fourteen days to file written objections to the proposed findings and recommendations. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); *see United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005). Failure to file an objection results in a waiver of the issue and the issue cannot be appealed. *Id.*; *see Thomas v. Arn*, 474 U.S. 140, 155 (1985) (upholding the Sixth Circuit's practice). No objections have been filed to date.

Although the Plaintiff's failure to file objections is a sufficient reason to adopt the Report and Recommendation, this Court has reviewed the merits of the report and finds the magistrate judge's reasoning and conclusions sound. Therefore,

**IT IS HEREBY ORDERED** that the Report and Recommendation (ECF No. 21) is APPROVED and ADOPTED as the Opinion of the Court.

**IT IS FURTHER ORDERED** that the Motion for Summary Judgment (ECF No. 18) is GRANTED.

**IT IS FURTHER ORDERED** that for the same reasons the Court concludes that Plaintiff's claims are properly dismissed, the Court also concludes that any issue Plaintiff might raise on appeal would be frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). Accordingly, the Court certifies that an appeal would not be taken in good faith.

A Judgment will be entered consistent with this Order.

Dated: June 13, 2023

/s/ Paul L. Maloney

Paul L. Maloney  
United States District Judge